

BROWN & JONES REPORTING, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STERLING D. BROWN,

Plaintiff,

- vs -

CITY OF MILWAUKEE, CITY OF
MILWAUKEE CHIEF OF POLICE
ALFONSO MORALES, in his
official capacity, SERGEANT
SEAN A. MAHNKE, SERGEANT
JEFFREY S. KRUEGER, OFFICER
JOSEPH J. GRAMS, OFFICER BOJAN
SAMARDZIC, OFFICER JAMES P.
COLLINS, OFFICER CRISTOBAL
MARTINEZ AVILA, OFFICER ERIK A.
ANDRADE, and OFFICER JASON P.
JENSEN,

Case No. 2:18-cv-922

Defendants.

Video Examination of CRISTOBAL MARTINEZ AVILA,
taken at the instance of the Plaintiff, under and
pursuant to the Federal Rules of Civil Procedure, before
KARA D. SHAWHAN, a Certified Realtime Reporter,
Registered Merit Reporter and Notary Public in and for
the State of Wisconsin, at City of Milwaukee, Office of
City Attorney, 841 North Broadway, Milwaukee, Wisconsin,
on May 29, 2019, commencing at 9:10 a.m. and concluding
at 11:55 a.m.

A P P E A R A N C E S

GINGRAS, CATES & WACHS, by
MR. MARK L. THOMSEN,
MR. SCOTT THOMPSON,
3228 Turnberry Oak Drive,
Waukesha, Wisconsin 53188,
appeared on behalf of the Plaintiff.

CITY OF MILWAUKEE,
OFFICE OF CITY ATTORNEY, by
MS. NAOMI GEHLING,
200 East Wells Street, Room 800,
Milwaukee, Wisconsin 53202,
appeared on behalf of the Defendants.

A L S O P R E S E N T

Ms. Stephanie Olson, Videographer.

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Disposition Of Original Exhibit/s:

Attached To Original Transcript

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1 TRANSCRIPT OF PROCEEDINGS

09:08 2 THE VIDEOGRAPHER: We are officially on
09:10 3 the record at 9:10 a.m. Today's date is May 29,
09:10 4 2019. This is Disk No. 1 of the deposition of
09:10 5 Cristobal Martinez Avila. This deposition is being
09:10 6 taken in the matter of Brown versus the City of
09:10 7 Milwaukee. This matter is pending in the United
09:10 8 States District Court in the Eastern District of
09:10 9 Wisconsin. This is Case No. 2:18-cv-922, and this
09:10 10 deposition is taking place at the Office of the
09:10 11 City Attorney located at 841 North Broadway,
09:11 12 Milwaukee, Wisconsin, 53202.

09:11 13 My name is Stephanie Olson, videographer.
09:11 14 The court reporter is Kara Shawhan. Will counsel
09:11 15 please state their appearances and whom they
09:11 16 represent beginning with plaintiff's counsel, and
09:11 17 then the reporter will swear in the witness.

09:11 18 MR. THOMSEN: Mark Thomsen and Scott
09:11 19 Thompson appearing on behalf of Mr. Brown.

09:11 20 MS. GEHLING: Assistant City Attorney
09:11 21 Naomi Gehling on behalf of all defendants.

09:11 22 CRISTOBAL MARTINEZ AVILA, called as a
09:11 23 witness herein, having been first duly sworn on
09:11 24 oath, was examined and testified as follows:

09:11 25 EXAMINATION

09:34 1 Q And Officer Anderson talked about what was
09:34 2 inappropriate at each point in time. Correct?

09:34 3 MS. GEHLING: Objection, foundation, but
09:34 4 you can answer.

09:34 5 THE WITNESS: At times?

09:34 6 BY MR. THOMSEN:

09:34 7 Q Okay. So I want you to tell the jury what Officer
09:35 8 Anderson said and pointed out to you about what was
09:35 9 inappropriate about Officer Grams' initial approach
09:35 10 with Mr. Brown.

09:35 11 A His choice of words. He could possibly use
09:35 12 different words. I don't recall what words, but
09:35 13 his initial approach.

09:35 14 Q I'm waiting. How many remedial trainings have you
09:35 15 been in?

09:35 16 A One, sir.

09:36 17 Q Once before you even had two years on the force.
09:36 18 Right?

09:36 19 MS. GEHLING: Objection, argumentative.

09:36 20 BY MR. THOMSEN:

09:36 21 Q Am I right?

09:36 22 A I have once. Yes, sir. Once.

09:36 23 Q So where was this remedial training? Where did it
09:36 24 take place?

09:36 25 A At the academy.

09:58 1 interaction, improving communication skills.

09:58 2 That's all I remember, sir.

09:58 3 Q And that's all you can remember about two hours,
09:58 4 and that's all you're going to tell the jury.

09:59 5 A If that's all I remember, that's all I remember,
09:59 6 sir.

09:59 7 Q Were you trained to stand on someone's leg after
09:59 8 they've been handcuffed and laying on the ground?

09:59 9 MS. GEHLING: Objection, argumentative.

09:59 10 THE WITNESS: No, sir.

09:59 11 BY MR. THOMSEN:

09:59 12 Q You were trained to intervene when you saw someone
09:59 13 acting inconsistent with the training. Correct?

09:59 14 A Yes, sir.

09:59 15 Q So when you saw Officer Collins standing on
09:59 16 Mr. Brown's leg, why didn't you intervene and tell
09:59 17 him to get off of Mr. Brown's leg?

09:59 18 MS. GEHLING: Objection, foundation.

09:59 19 THE WITNESS: I didn't see that.

09:59 20 BY MR. THOMSEN:

09:59 21 Q Where were you?

09:59 22 A On scene, sir.

09:59 23 Q And how is it that you didn't see it?

09:59 24 MS. GEHLING: Objection, argumentative.

10:00 25 THE WITNESS: I was -- I didn't see it,

10:00 1 sir.

10:00 2 BY MR. THOMSEN:

10:00 3 Q So if you would have seen it, you would have
10:00 4 intervened.

10:00 5 MS. GEHLING: Objection, foundation.

10:00 6 THE WITNESS: Like I said, sir, I didn't
10:00 7 see it, sir.

10:00 8 BY MR. THOMSEN:

10:00 9 Q Did you see Officer Grams stand on Mr. Brown's leg?

10:00 10 A No, sir.

10:00 11 Q What are you going to tell the jury you do remember
10:00 12 about this -- your contact with Mr. Brown?

10:00 13 MS. GEHLING: Objection, vague.

10:00 14 THE WITNESS: Can you be more specific,
10:00 15 sir?

10:00 16 BY MR. THOMSEN:

10:00 17 Q I just asked you a question, sir. I just want to
10:00 18 know what you're going to tell the jury about
10:01 19 Mr. Brown. It's clear to me you're not here to
10:01 20 tell me about anything you saw what the officers
10:01 21 do. Right? Because you don't recall that.
10:01 22 Correct?

10:01 23 MS. GEHLING: Objection, argumentative.

10:01 24 THE WITNESS: I recall --

10:01 25 BY MR. THOMSEN:

10:20 1 A He was detained, sir. It was pending
10:20 2 investigation, sir.

10:20 3 Q So you disagree with Officer Andrade.

10:20 4 A Not necessarily.

10:20 5 Q In what ways were Mr. Brown's constitutional rights
10:20 6 violated, sir?

10:21 7 A I said, sir, he was detained. Not arrested.
10:21 8 Detained pending investigation, sir. We've got to
10:21 9 investigate, sir.

10:21 10 Q I heard you. But you said you agree in part with
10:21 11 Officer Andrade that Mr. Brown's constitutional
10:21 12 rights were violated. Correct?

10:21 13 MS. GEHLING: Objection, mischaracterizes
10:21 14 testimony.

10:21 15 THE WITNESS: Partially, correct, sir.

10:21 16 BY MR. THOMSEN:

10:21 17 Q Okay. Tell the jury to what extent you agree with
10:21 18 Officer Andrade that Mr. Brown's constitutional
10:21 19 rights were violated.

10:22 20 A I said, sir, he was detained pending investigation.

10:22 21 Q Okay. At some point in time Mr. Brown should have
10:22 22 been allowed to leave. Correct?

10:22 23 A Correct.

10:22 24 Q And the fact that he was not allowed to leave and
10:22 25 he ended up being surrounded, taken to the ground,

10:22 1 tased and arrested constitute a violation of his
10:22 2 constitutional rights. Correct?

10:22 3 MS. GEHLING: Objection, argumentative.

10:22 4 THE WITNESS: No, sir.

10:22 5 BY MR. THOMSEN:

10:22 6 Q So I just want to know to what extent you agree
10:22 7 with Officer Andrade that Mr. Brown's
10:22 8 constitutional rights were violated.

10:22 9 A A lot of factors play into it. Just a lot of
10:23 10 factors play into it, sir.

10:23 11 Q I was listening, sir. And I heard your answer
10:23 12 under oath that you partially agree with Officer
10:23 13 Andrade that Mr. Brown's constitutional rights were
10:23 14 violated. Correct?

10:23 15 A Correct, sir.

10:23 16 Q Okay. I want you to articulate or tell the jury
10:23 17 how Mr. Brown's constitutional rights were
10:23 18 violated.

10:23 19 A I told you before he was detained pending
10:23 20 investigation.

10:23 21 Q And the investigation revealed that he was just
10:23 22 illegally parked. Correct?

10:23 23 A Yes, sir.

10:23 24 Q And based on the investigation, he should have
10:24 25 received at most a parking ticket. Correct?

11:40 1 violation of such policy. They have a racist
11:40 2 connotation and are derogatory mocking an
11:40 3 individual who was recently the subject of
11:40 4 officers' use of force."

11:40 5 First of all, do you agree that Officer
11:40 6 Andrade's postings have a racist connotation?

11:40 7 A No, sir.

11:40 8 Q Do you know why Officer Andrade was fired for his
11:41 9 posts while the officers who used excessive force
11:41 10 were not?

11:41 11 MS. GEHLING: Objection, argumentative.
11:41 12 Assumes testimony not given.

11:41 13 THE WITNESS: Social media.

11:41 14 BY MR. THOMSEN:

11:41 15 Q And what is it that you have learned from the
11:41 16 discipline that's been issued as it relates to
11:41 17 Mr. Brown's case?

11:41 18 MS. GEHLING: Objection, vague.

11:41 19 THE WITNESS: Just be careful with social
11:41 20 media.

11:41 21 BY MR. THOMSEN:

11:41 22 Q Are you aware of any officers that have ever been
11:41 23 disciplined for using excessive force?

11:41 24 A No, sir.

11:41 25 Q Are you aware of any officers that have been

11:41 1 disciplined for their racial conduct?

11:42 2 MS. GEHLING: Objection, vague.

11:42 3 THE WITNESS: No, sir.

11:42 4 BY MR. THOMSEN:

11:42 5 Q Have you had any discussions with any of your
11:42 6 fellow officers about the fairness or unfairness of
11:42 7 the fact that Officer Andrade was fired while the
11:42 8 rest of you were not?

11:42 9 A Yes.

11:42 10 Q Who have you had those discussions with?

11:42 11 A I can't recall at the moment, sir. Co-workers.

11:42 12 Q Tell me what co-workers.

11:42 13 A I don't recall all of them, sir.

11:42 14 Q Just give me the names of those you do recall, sir.

11:43 15 A Jensen would be one of them because he's my
11:43 16 partner. We work every day together. Samardzic.

11:43 17 Q Tell me about the discussions that you've had with
11:43 18 Officer Jensen about the fact that Sergeant Mahnke,
11:43 19 Sergeant Krueger and the rest of you were not fired
11:43 20 while Officer Andrade was.

11:43 21 A I don't recall the exact conversation. Just
11:43 22 that it was --

11:43 23 Q Tell me what you can --

11:43 24 A Just that it was unfair.

11:43 25 Q What was unfair?

11:51 1 transporting citizens or prisoners, the officer's
11:51 2 body-worn cameras shall be turned on."

11:51 3 Q So there was a counseling session on proper
11:51 4 transport as well as proper use of body-worn
11:51 5 cameras?

11:51 6 MS. GEHLING: Objection, relevance,
11:51 7 foundation.

11:51 8 THE WITNESS: I did speak to Sergeant
11:51 9 McAleer one on one. Yes, sir.

11:51 10 BY MR. THOMSEN:

11:51 11 Q Do you agree, officer, that when you saw Officer
11:51 12 Collins standing on Mr. Brown's leg, you should
11:51 13 have told him to remove his boot?

11:51 14 MS. GEHLING: Objection, argumentative,
11:51 15 assumes testimony not given.

11:52 16 THE WITNESS: I did not see that, sir.

11:52 17 BY MR. THOMSEN:

11:52 18 Q And how far was Officer Collins from where you
11:52 19 were?

11:52 20 MS. GEHLING: Objection, vague.

11:52 21 THE WITNESS: I'd say inches away.

11:52 22 BY MR. THOMSEN:

11:52 23 Q Was there something blocking your view?

11:52 24 MS. GEHLING: Objection, argumentative.

11:52 25 THE WITNESS: Just a lot of people on the